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 Attorneys for Defendants CD Digital Card  
 and One Disc.com Inc.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF NEW YORK

SERIOUS USA, INC; SERIOUS IP, INC.; And DXPDD, LLC,	:	<b>ECF CASE</b>
Plaintiff,	:	<b>ANSWER, AFFIRMATIVE    DEFENSES AND    COUNTERCLAIM    (JURY TRIAL DEMANDED)</b>
- against -	:	
CD DIGITAL CARD; CD WORKS; DISC MAKERS; IMX SOLUTIONS. INC.; INGRAM MICRO INC.; L&M OPTICAL DISC, LLC; MICROVISION DEVELOPMENT, INC.; ONEDISC.COM, INC. and SONARUS CORPORATION,	:	<b>CIVIL ACTION NO. 08-CV-4808    (SHS)</b>
Defendants.	:	

Defendants CD DIGITAL CARD and ONEDISC.COM, INC (collectively “Defendants”) hereby file this Answer and Counterclaim in response to the Complaint filed by Plaintiffs, SERIOUS USA, INC; SERIOUS IP, INC.; and DXPDD, LLC (collectively “Plaintiffs”).

In response to the numbered paragraphs of Plaintiffs’ Complaint which apply to Defendants CD DIGITAL CARD and ONEDISC.COM, INC., Defendants CD DIGITAL CARD and ONEDISC.COM, INC. state as follows:

**THE PARTIES**

1. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 1 of the Complaint are true and correct and therefore deny same.
2. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 2 of the Complaint are true and correct and therefore deny same.
3. Defendants are without sufficient knowledge or information to form a belief as to whether the averments of Paragraph 3 of the Complaint are true and correct and therefore deny same.
4. Admitted.
5. Admitted that Defendant CD Digital does business in the State of New York and this District but denies that CD Digital has committed acts of patent infringement within the State of New York or this District.
6. No response required from Defendants CD Digital and OneDisc.
7. No response required from Defendants CD Digital and OneDisc.
8. No response required from Defendants CD Digital and OneDisc.
9. No response required from Defendants CD Digital and OneDisc.
10. No response required from Defendants CD Digital and OneDisc.
11. No response required from Defendants CD Digital and OneDisc.
12. No response required from Defendants CD Digital and OneDisc.
13. No response required from Defendants CD Digital and OneDisc.
14. No response required from Defendants CD Digital and OneDisc.
15. No response required from Defendants CD Digital and OneDisc.

16. No response required from Defendants CD Digital and OneDisc.
17. No response required from Defendants CD Digital and OneDisc.
18. No response required from Defendants CD Digital and OneDisc.
19. Admitted.
20. Admitted that Defendant OneDisc does business in the State of New York and this District but denies that OneDisc has committed acts of patent infringement within the State of New York or this District.
21. No response required from Defendants CD Digital and OneDisc.
22. No response required from Defendants CD Digital and OneDisc.
23. Admitted.
24. Admitted.
25. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 25 of the Complaint are true and correct and therefore deny same.
26. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 26 of the Complaint are true and correct and therefore deny same.
27. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 27 of the Complaint are true and correct and therefore deny same.
28. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 28 of the Complaint are true and correct and therefore deny same.

29. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 29 of the Complaint are true and correct and therefore deny same.

30. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 30 of the Complaint are true and correct and therefore deny same.

31. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

32. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

33. Defendants are without sufficient knowledge or information to form a belief as to whether the allegations of Paragraph 31 of the Complaint are true and correct and therefore deny same.

**COUNT I**

**Infringement of United States Design Patent No. D503,404 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc and Sonarus.**

34. Denied as to Defendants CD Digital and OneDisc.

35. Denied.

36. Denied.

37. Denied.

38. No response required from Defendants CD Digital and OneDisc.

39. No response required from Defendants CD Digital and OneDisc.

40. No response required from Defendants CD Digital and OneDisc.
41. No response required from Defendants CD Digital and OneDisc.
42. No response required from Defendants CD Digital and OneDisc.
43. No response required from Defendants CD Digital and OneDisc.
44. No response required from Defendants CD Digital and OneDisc.
45. No response required from Defendants CD Digital and OneDisc.
46. No response required from Defendants CD Digital and OneDisc.
47. No response required from Defendants CD Digital and OneDisc.
48. No response required from Defendants CD Digital and OneDisc.
49. No response required from Defendants CD Digital and OneDisc.
50. No response required from Defendants CD Digital and OneDisc.
51. No response required from Defendants CD Digital and OneDisc.
52. No response required from Defendants CD Digital and OneDisc.
53. No response required from Defendants CD Digital and OneDisc.
54. No response required from Defendants CD Digital and OneDisc.
55. No response required from Defendants CD Digital and OneDisc.
56. Denied
57. Denied.
58. Denied.
59. No response required from Defendants CD Digital and OneDisc.
60. No response required from Defendants CD Digital and OneDisc.
61. No response required from Defendants CD Digital and OneDisc.

COUNT II

**Infringement of United States Design Patent No. 6,510,124 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvision, OneDisc and Sonarus.**

62. Denied as to Defendants CD Digital and OneDisc.
63. Denied.
64. Denied.
65. Denied.
66. No response required from Defendants CD Digital and OneDisc.
67. No response required from Defendants CD Digital and OneDisc.
68. No response required from Defendants CD Digital and OneDisc.
69. No response required from Defendants CD Digital and OneDisc.
70. No response required from Defendants CD Digital and OneDisc.
71. No response required from Defendants CD Digital and OneDisc.
72. No response required from Defendants CD Digital and OneDisc.
73. No response required from Defendants CD Digital and OneDisc.
74. No response required from Defendants CD Digital and OneDisc.
75. No response required from Defendants CD Digital and OneDisc.
76. No response required from Defendants CD Digital and OneDisc.
77. No response required from Defendants CD Digital and OneDisc.
78. No response required from Defendants CD Digital and OneDisc.
79. No response required from Defendants CD Digital and OneDisc.
80. No response required from Defendants CD Digital and OneDisc.
81. No response required from Defendants CD Digital and OneDisc.

82. No response required from Defendants CD Digital and OneDisc.
83. No response required from Defendants CD Digital and OneDisc.
84. Denied.
85. Denied.
86. Denied.
87. No response required from Defendants CD Digital and OneDisc.
88. No response required from Defendants CD Digital and OneDisc.
89. No response required from Defendants CD Digital and OneDisc.

**COUNT III**

**Infringement of United States Design Patent No. 6,762,988 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.**

90. Denied as to Defendants CD Digital and OneDisc.
91. Denied.
92. Denied.
93. Denied.
94. No response required from Defendants CD Digital and OneDisc.
95. No response required from Defendants CD Digital and OneDisc.
96. No response required from Defendants CD Digital and OneDisc.
97. No response required from Defendants CD Digital and OneDisc.
98. No response required from Defendants CD Digital and OneDisc.
99. No response required from Defendants CD Digital and OneDisc.
100. No response required from Defendants CD Digital and OneDisc.
101. No response required from Defendants CD Digital and OneDisc.

102. No response required from Defendants CD Digital and OneDisc.
103. No response required from Defendants CD Digital and OneDisc.
104. No response required from Defendants CD Digital and OneDisc.
105. No response required from Defendants CD Digital and OneDisc.
106. No response required from Defendants CD Digital and OneDisc.
107. No response required from Defendants CD Digital and OneDisc.
108. No response required from Defendants CD Digital and OneDisc.
109. No response required from Defendants CD Digital and OneDisc.
110. No response required from Defendants CD Digital and OneDisc.
111. No response required from Defendants CD Digital and OneDisc.
112. Denied.
113. Denied.
114. Denied.
115. No response required from Defendants CD Digital and OneDisc.
116. No response required from Defendants CD Digital and OneDisc.
117. No response required from Defendants CD Digital and OneDisc.

**COUNT IV**

**Infringement of United States Design Patent No.7,308,696 by Each of CD Digital, CDW, Disc Makers, Infinite, Ingram, L&M, Microvison, OneDisc and Sonarus.**

118. Denied as to Defendants CD Digital and OneDisc.
119. Denied.
120. Denied.
121. Denied.
122. No response required from Defendants CD Digital and OneDisc.

123. No response required from Defendants CD Digital and OneDisc.
124. No response required from Defendants CD Digital and OneDisc.
125. No response required from Defendants CD Digital and OneDisc.
126. No response required from Defendants CD Digital and OneDisc.
127. No response required from Defendants CD Digital and OneDisc.
128. No response required from Defendants CD Digital and OneDisc.
129. No response required from Defendants CD Digital and OneDisc.
130. No response required from Defendants CD Digital and OneDisc.
131. No response required from Defendants CD Digital and OneDisc.
132. No response required from Defendants CD Digital and OneDisc.
133. No response required from Defendants CD Digital and OneDisc.
134. No response required from Defendants CD Digital and OneDisc.
135. No response required from Defendants CD Digital and OneDisc.
136. No response required from Defendants CD Digital and OneDisc.
137. No response required from Defendants CD Digital and OneDisc.
138. No response required from Defendants CD Digital and OneDisc.
139. No response required from Defendants CD Digital and OneDisc.
140. Denied.
141. Denied.
142. Denied
143. No response required from Defendants CD Digital and OneDisc.
144. No response required from Defendants CD Digital and OneDisc.
145. No response required from Defendants CD Digital and OneDisc.

**COUNT V**

**Infringement of United States Design Patent No. D502,469 by Each of CD Digital, and OneDisc.**

146. Denied as to Defendants CD Digital and OneDisc.
147. Denied.
148. Denied.
149. Denied.
150. Denied.
151. Denied.
152. Denied.

**COUNT VI**

**Infringement of United States Design Patent No. 6,304,544 by Each of CD Digital, CDW, ImX, OneDisc and Sonarus.**

153. Denied as to Defendants CD Digital and OneDisc.
154. Denied.
155. Denied.
156. Denied.
157. No response required from Defendants CD Digital and OneDisc.
158. No response required from Defendants CD Digital and OneDisc.
159. No response required from Defendants CD Digital and OneDisc.
160. No response required from Defendants CD Digital and OneDisc.
161. No response required from Defendants CD Digital and OneDisc.
162. No response required from Defendants CD Digital and OneDisc.
163. Denied.

164. Denied.
165. Denied.
166. No response required from Defendants CD Digital and OneDisc.
167. No response required from Defendants CD Digital and OneDisc.
168. No response required from Defendants CD Digital and OneDisc.

**COUNT VII**

**Infringement of United States Design Patent No. 5,982,736 by Each of CD Digital, and OneDisc.**

169. Denied as to Defendants CD Digital and OneDisc.
170. Denied.
171. Denied.
172. Denied.
173. Denied.
174. Denied.
175. Denied.

**COUNT VIII**

**Infringement of United States Design Patent No. 6,078,557 by Each of CD Digital, and OneDisc.**

176. Denied as to Defendants CD Digital and OneDisc.
177. Denied.
178. Denied.
179. Denied.
180. Denied.
181. Denied.
182. Denied.

**COUNT IX**

**Infringement of United States Design Patent No. 6,016,298 by CD Digital.**

183. Denied as to Defendants CD Digital and OneDisc.

184. Denied.

185. Denied.

186. Denied.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense.**

1) Defendants have presented prior art to Plaintiffs' which shows that some or all of the claimed subject matter set forth in the patents-in-suit was known in the art at least one year prior to the filing date of each of the respective patents. The patents-in-suit are therefore invalid and as such may not be enforced against Defendants.

**Second Affirmative Defense.**

2) Plaintiffs' have failed to state a claim of patent infringement upon which relief may be granted as the patents-in-suit are invalid.

**Third Affirmative Defense.**

3) Plaintiffs' claims against Defendants are barred by the doctrine of laches and/or estoppel.

**Fourth Affirmative Defense.**

4) Defendants are indemnified against any recovery by Plaintiffs' in this action pursuant to the provisions of UCC 2-312(3).

**Fifth Affirmative Defense.**

5) Plaintiffs' claim of infringement against Defendants is barred by license as products sold by Defendants were, upon information and belief, supplied to Defendants by one authorized to sell such products in the United States.

**COUNTERCLAIM**

Defendants CD Digital and OneDisc complain of Plaintiffs' and allege as follows:

1. Defendant/Counterclaim Plaintiff CD Digital is a California Corporation with a principal place of business at 1150 White Birch Drive, Rancho Cucamonga, California, 91730.
2. Defendant/Counterclaim Plaintiff OneDisc.Com, Inc., is a Minnesota Corporation with a principle place of business at 4668 Murray Avenue, St. Paul, Minnesota, 55110-3425.

**JURISDICTION AND VENUE**

3. The following counterclaims arise under the Patent Statue, Title 35 U.S.C. § 1 *et. seq.*

This Court has personal jurisdiction over Plaintiffs under 28 USC §§ 1331 and 1338 (a).

Plaintiffs resides in and transact business in this State and the events giving rise to this Counterclaim occurred in this State and/or had effects in this State. Venue is proper in this District pursuant to Title 28 U.S.C. §§ 1391(b)(c) and 1400(b) because Plaintiffs regularly do business and are subject to personal jurisdiction here.

**COUNT I**  
**JUDGMENT OF INVALIDITY AND NON-INFRINGEMENT**

4. Defendants incorporate by reference all the preceding paragraphs as if fully set forth herein.
5. Defendants allege, on information and belief, that U.S. Patent Nos. D503,404, 6,510,124, 6,762,988, 7,308,696, 5,982,736, 6,304,544, 6,078,557, D502,469 and 6,016,298 ("patents-in-suit") are invalid, unenforceable and void for one or more of the following reasons:
  - (a) Defendants have not infringed any claim of the patents-in-suit;

(b) The patentee of each patent did not invent the subject matter patented, nor did he make any invention or discovery, either novel, original or otherwise, within the meaning of United States Code, Title 35;

(c) The alleged invention in each patent was made by another person in this country before the patentee's alleged invention, and such other person had not abandoned, suppressed, or concealed it;

(d) The claims, and each of them, of each patent are excessively vague and indefinite and do not distinctly point out and define the invention;

(e) In light of the prior art at the time each alleged invention was made, the subject matter as claimed in each patent would have been obvious to a person skilled in the art to which the alleged invention relates and does not constitute a patentable invention;

(f) More than one year prior to the filing of the original patent application which matured into each of the patents in suit, the alleged invention was patented or described in printed publications in this or in foreign countries, or was in public use or on sale in this country;

(g) Before the alleged invention or discovery by the patentee, the alleged invention in each patent was known or used by others and was on sale in this country and was patented or described in printed publication in this or in foreign countries;

(h) If there is any invention in the subject matter of any of the patents in suit, which is denied, the patents nevertheless were not obtained in a manner consistent with the provisions of Title 35 of the United States Code; and

(i) Plaintiffs, with full knowledge of the activities of Defendants CD Digital and OneDisc have failed to assert its patents for a period since the issuance of the patents-in-suit while Defendants CD Digital and OneDisc invested time and money in building their business

and goodwill, and Plaintiffs are guilty of laches and cannot maintain any cause of action against Defendants CD Digital and OneDisc under the patents-in-suit.

**PRAYER FOR RELIEF**

Wherefore, Defendants CD Digital and OneDisc respectfully request that this Honorable Court enter a judgment that:

- A. The patents-in-suit are invalid and unenforceable;
- B. Defendants CD Digital and OneDisc have not infringed any of the claims of the patents-in-suit, and
- C. Grants on such other relief as this Court seems necessary, just, fair and reasonable.

Respectfully Submitted,

Dated: 14 July 2008



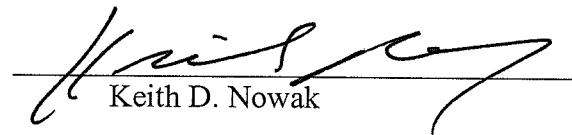
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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM (JURY TRIAL DEMANDED) was served by e-mail and first class mail this 14<sup>th</sup> day of July, 2008 to:

Seth H. Ostrow  
Dreier LLP  
499 Park Avenue  
New York, NY 10022  
sostrow@dreierllp.com

Date: July 14, 2008



Keith D. Nowak